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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AS TO JURISDICTION.

JOHN B. GAGE,
Counsel for Appellants.

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(STATEMENT OF APPELLANTS PURSUANT TO PROVISIONS OF RULE XII OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES SHOWING THAT THAT COURT HAS JURISDICTION TO REVIEW UPON APPEAL THE FINAL JUDGMENT OR DECREE OF THE DISTRICT COURT.)

I.

These fifty individual suits, consolidated through stipulation of parties for the purpose of presentation, trial and other proceedings therein, arose to suspend and restrain the enforcement, operation and execution of an Order of

the Secretary of Agriculture of the United States dated June 14, 1933, entered in a proceeding entitled "Secretary of Agriculture *v.* L. B. Andrews, doing business as L. B. Andrews Live Stock Commission Company, et al.," Bureau of Animal Industry, Docket No. 311, instituted under the Packers and Stockyards Act, 1921 (Title 7 U. S. Code, Chap. 9, Sections 181-229; Chap. 64, 42 Stat. 159 et seq.). Section 316 of that Act (Title 7, U. S. Code, Section 217) provides:

> "217. Proceedings for suspension of orders. For the purposes of sections 201 to 217, inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of Sections 201 to 217, inclusive of this chapter. (Aug. 15, 1921, c. 64, Sec. 316, 42 Stat. 168.)"

The applicable provisions of the laws relating to the suspending or restraining the enforcement of orders of the Interstate Commerce Commission, made by the statute quoted, also applicable to suspending or restraining the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921, are found in Title 28, U. S. Code, Section 47 (Judicial Code, Section 24 g, Oct. 22, 1913 c. 32, 32 Stat. 220). This Act provides for a hearing by a three-judge court upon an application for an interlocutory injunction to sustain or restrain the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921; and further provides:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or

denying, after notice and hearing, an interlocutory injunction * * *".

The Section further provides:

"And upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission, the same requirement as to judges and the same procedure as to exception and appeal shall apply."

Section 345, Title 28 U. S. Code (Judicial Code, Section 238 amended) provides that the Supreme Court has appellate jurisdiction to review the final decree of a District Court as provided in Section 47 of Title 28, referred to and quoted from above.

II.

The constitutionality of the provisions of Packers and Stockyards Act, 1921, is not involved.

III.

The date of the final decree and order sought to be reviewed is June 15, 1935, and the date upon which the application for appeal is presented is June 20, 1935.

IV.

The Secretary of Agriculture, under the provisions of the Packers and Stockyards Act, 1921 (42 Stat. L. 163) in the order drawn in question in this case entered on the 14th day of June, 1933, sought to exercise authority granted to him under the provisions of said Act by holding that certain rates and charges made and filed with him by the appellants as market agencies at the Kansas City Stock Yards, in Kansas City, Missouri, were unjust and unreasonable and by ordering that certain rates and charges set

out in said order and found by him to be just and reasonable should constitute the maximum rates and charges to be on and after July 24, 1933, collected and charged by such market agencies for services rendered at said Kansas City Stock Yards in the business of buying or selling livestock in commerce. The appellants instituted individual suits herein to enjoin and restrain the enforcement of said order by the defendants. A statutory three-judge court was assembled. On July 22, 1933, the District Court entered an interlocutory judgment restraining the enforcement of said order. On final hearing, the petitions of appellants were dismissed. It is claimed by the appellants, and each of them, that the District Court erred in striking out, upon motion of the appellees, allegations in the several petitions of appellants challenging the legality of the manner in which purported hearings in the proceedings before the Secretary of Agriculture entitled "Bureau of Animal Industry, Docket No. 311" were conducted, and alleging that the several petitioners were denied full hearings before the Secretary as provided for and required by the Packers and Stockyards Act, 1921; erred in holding that the conclusions expressed in said order of the Secretary of Agriculture were based upon proper findings of fact made by the Secretary of Agriculture in said order; erred in holding that such findings of fact as were contained in said order of the Secretary of Agriculture were made upon any substantial evidence submitted to the Secretary; erred in failing to hold that the Secretary in said order arbitrarily ignored relevant and material facts appearing from the undisputed evidence taken at the hearings before the Secretary, the effect of the consideration of which clearly established the unjustness, unreasonableness and illegality of the maximum rates and charges denominated as just and reasonable in said order; erred in failing to hold that the conclusions expressed in said order of the Secretary of

Agriculture were based on erroneous conceptions of established rules of law and in upholding a method of determining the justness and reasonableness of rates and charges of the appellants predicated upon a purely hypothetical consideration of conditions that might exist in the business engaged in by appellants if competition between appellants for business as among themselves and with others were eliminated and the business of each and all of appellants consolidated and managed in the manner suggested in the opinion of the court; erred in holding that the effect of such order, in determining the reasonable costs to each of the appellants in operating their respective business did not substitute the judgment of the Secretary of Agriculture for that of appellants in the management of their respective businesses; erred in failing to hold as arbitrary and capricious the action of the Secretary excluding in his findings of reasonable costs expenses amounting to thousands of dollars actually sustained by each plaintiff and without evidence that any of the expenses actually incurred by appellants were unnecessary or were incurred as the result of inefficiency or improvidence of appellants, or any of them; erred in holding that the effect of said order did not deprive appellants, and each of them, of their property or livelihood without due process of law in violation of rights guaranteed to them and each of them under the Fifth Amendment to the Constitution of the United States; and erred in failing to find that the said order of the Secretary of Agriculture drawn in question was arbitrary, unjust and unreasonable, and hence, illegal and void. The prayer for reversal is deemed by the appellants to be justified under the decisions of the Supreme Court of the United States in *Tagg Brothers & Moorhead* v. *United States,* 280 U. S. 420, 74 L. Ed. 524, and *West Ohio Gas Company* v. *Public Utilities Commission of Ohio,* 55 Sup. Ct. 316, 324, 79 L. Ed., Adv. Sheets 274, decided January 7, 1935, and

other pertinent decisions of the Supreme Court of the United States.

V.

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are *Tagg Brothers and Moorhead* v. *United States,* 280 U. S. 420, 74 L. Ed. 524, and *Stafford* v. *Wallace,* 258 U. S. 495, 512, 66 L. Ed. 735, 740.

Respectfully submitted,

JOHN B. GAGE,
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IN THE

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MOTION TO SUBSTITUTE PARTY APPELLANT

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